



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 25317245

Date: FEB. 9, 2023

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant is seeking review of a decision withdrawing his Temporary Protected Status under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Vermont Service Center withdrew TPS, concluding that the Applicant did not submit sufficient documentation to establish that he had not been convicted of two or more misdemeanor offenses committed in the United States. We dismissed the Applicant's appeal on the same ground, and rejected his motion to reconsider as untimely filed. We subsequently reopened the proceedings on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), and gave the Applicant an opportunity to submit a brief directly to our office within 33 days. To date we have not received a brief, additional evidence, or any other correspondence from the Applicant and deem the record complete.

Upon review, we will dismiss the motion to reconsider.

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the immigration benefit sought.

As previously discussed, USCIS may withdraw TPS at any time if the recipient was not in fact eligible at the time they were granted such status or later becomes ineligible. 8 C.F.R. § 244.14(a)(1). An individual who was convicted of two or more misdemeanor offenses committed in the United States is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act.

A conviction exists for immigration purposes where a court has entered a formal judgment of guilt or, if adjudication of guilt has been withheld, where a judge or jury has found the individual guilty or the individual has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the individual's liberty. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

The Applicant bears the burden of proof to demonstrate eligibility for an immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

The record reflects, and the Applicant does not dispute that in [] 2002 he was convicted of driving while impaired (DWI), a misdemeanor offense. In addition, the Applicant was arrested and charged with a misdemeanor offense of making a false report to a police station in [] 2002. The Director found the evidence insufficient to establish that this arrest did not result in a second misdemeanor conviction (in addition to DWI), and concluded that the Applicant therefore did not meet his burden of proof to show continued eligibility for TPS.

In our previous decision, which we incorporate here by reference we determined that the certified court disposition concerning the false report charge was insufficient to overcome this determination, as it showed only that the charge was “disposed” of in [] 2002 after the Applicant “complied with deferral”; it did not include information about the deferral process, nor did it indicate whether he entered a plea and if or how he was punished. We acknowledged the Applicant’s claim that there is an informal deferred prosecution process in North Carolina where a plea is not necessary, but explained that because he did not provide evidence that he entered such deferred prosecution process, the record remained insufficient to establish that he did not have two misdemeanor convictions for immigration purposes.

The Applicant avers that we improperly evaluated the certified court disposition, and that we erred by relying on a North Carolina deferred prosecution provision which was not in effect at the time of his 2002 arrest. He reiterates that the “deferred dismissal” he received was non-statutory, and that he has shown he was not convicted of the offense because the court disposition does not indicate that he entered a plea or was sentenced to probation. The Applicant states that the court disposition therefore constitutes credible and probative evidence sufficient to overcome the lack of the underlying deferred prosecution agreement. We are not persuaded.

As an initial matter, we recognize that the North Carolina provision referenced in our prior decision was not in effect at the time the Applicant was arrested in 2002. However, contrary to the Applicant’s assertion we did not rely on that provision in dismissing his appeal; rather, we referenced it only to illustrate that some deferred adjudications may constitute a conviction for immigration purposes even if a charge is ultimately dismissed.¹ We explained that the court disposition the Applicant submitted was inadequate to support his claim that he was not convicted of the charged offense because although the annotations therein indicated that he “complied with deferral” and that the charge was “disposed,” it did not specify whether he was required to enter a plea as part of the deferral process and what

¹ As stated, if an individual pleads guilty or *nolo contendere*, or is found guilty but the court defers entry of the judgment to allow the individual to complete a period of probation or a diversion program, the individual has been “convicted” within the meaning of section 101(a)(48) of the Act. See e.g., *Matter of Mohamed*, 27 I&N Dec. 92, 98 (BIA 2017) (holding that entry into a pretrial intervention agreement qualified as a “conviction” for immigration purposes under section 101(a)(48)(A) of the Act, where an individual admitted sufficient facts to warrant a finding of guilt, and the judge authorized the agreement ordering the individual to participate in the pretrial intervention program). On the other hand, if the charges are dismissed following successful completion of a pretrial diversion program which occurred prior to a pleading or finding of guilt, the individual is not considered convicted for immigration purposes. *Matter of Grullon*, 20 I&N Dec. 12, 14-15 (BIA 1989) (citing *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988)).

conditions he had to fulfill for the court to find that he “complied with deferral.” We acknowledge that the court documents concerning the false report to a police station charge and related subsequent proceedings have been destroyed due to the passage of time; nevertheless, the burden of proof to establish that the criminal grounds of ineligibility for TPS do not apply rests with the Applicant.

The Applicant has not demonstrated that we erred as a matter of law or USCIS policy in dismissing his appeal, or that our decision was otherwise incorrect based on the evidence in the record at the time of the decision. Consequently, the Applicant has not established a basis for reconsideration of our previous decision. His appeal will therefore remain dismissed and his TPS withdrawn.

ORDER: The motion to reconsider is dismissed.